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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 777

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, AS TAX COLLECTOR,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLANT'S STATEMENT DISCLOSING BASIS OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

This Court has jurisdiction of this appeal because it is a case wherein was drawn in question the validity of a provision of the Constitution of the State of Georgia and certain statutes of the Code of Georgia enacted in pursuance thereof as being repugnant to several provisions of the Constitution of the United States, and the decision was in favor of the validity of said State constitutional provision and said State statutes enacted in pursuance thereof.

The Act of Congress of February 13, 1925, Chapter 229, 43 Stat. 938, gives jurisdiction to this Court on writ of error to "a final judgment or decree in any suit in the highest court of a State in which a decision could be had where is drawn in question * * * the validity of a statute of any State on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be reviewed as a matter of right on writ of error.

The judgment of the Supreme Court of Georgia, sustaining the constitutionality of the Georgia Constitution and said laws enacted in pursuance thereof, was rendered on the 14th day of October, 1936, the same appearing in pages 140-144 of the Southeastern Reporter Advance Sheets of December 10, 1936, which as indicated therein will be reported in the bound volume of the Southeastern Reporter to be numbered 188. Said judgment was rendered by the highest court of the State of Georgia and is a final decision upon all of the constitutional issues involved in the case.

Suit was commenced in the Superior Court of Fulton County, Georgia, as a suit for mandamus brought by appellant to require the appellee to privilege appellant to register and require him to administer the customary oath with the payment of the poll tax provision omitted therefrom and without paying seven years poll tax of $1.00 for each year since he became twenty-one years of age, together with *fi. fa.* penalties and interest aggregating the sum of $13.50. The original petition plainly and distinctly sets out the attack on the constitutionality of the Georgia laws complained of in a clear and orderly manner. Hence the valid-

ity of the statutes and provision of our State Constitution were drawn in question by the original suit.

The Superior Court of Fulton County upheld the constitutionality of the State Constitution and the statutes enacted in pursuance thereof as not being repugnant to or in conflict with the Federal constitutional provisions cited therein and refused to make the *mandamus nisi* absolute, having dismissed said petition on oral motion of counsel for appellee, the defendant in the lower court. The judgment and ruling of the Superior Court of Fulton County by His Honor Hugh M. Dorsey is presented in the record.

The plaintiff in the lower court and the appellant herein carried the case by writ of error to the Supreme Court of Georgia, which, as stated, is the highest court in the State in which a decision could be had. That court has rendered a final judgment in sustaining the judgment of Fulton Superior Court in denying all relief sought in said mandamus proceeding and dismissing said petition, as amended, thereby denying to appellant the right to register and vote for the electors of the President and Vice President of the United States and the Members of the Congress without paying said $13.50 tax, which, by reason of poverty, as set forth in the mandamus proceeding, he was unable to pay.

The provision of the Constitution of the State of Georgia, the validity of which is involved, is the Act of the General Assembly of the State of Georgia of 1908, ratified October 7th, 1908, published in Georgia Laws, 1908, commencing on page 27, and the Act of the General Assembly of the State of Georgia, ratified November 8th, 1932, published in Georgia Laws, 1931, commencing on page 102. The particular part of the constitutional provision is that part which requires as a prerequisite to the right to register and vote the payment of all poll taxes, to wit:

> "To entitle a person to register and vote at any election by the people, he shall have resided in the

> State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. * * *"

which said constitutional amendment was proposed by the Acts of 1931, ratified November 8th, 1932, the original constitutional provision relating thereto having required the payment of all taxes of every nature whatsoever as a prerequisite to voting.

The particular parts of the Georgia statutes involved are codified as Code Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia of 1933, and being as follows:

> 34-103. "I do swear, or affirm, that * * * I have paid all poll taxes which I have had an opportunity of paying agreeably to law; * * *." (Acts 1894, pp. 116; Acts 1908, pp. 58; Acts 1913, pp. 115; Const., Art. II, Sec. 1, Par. II and Sec. 2-603.)
>
> 34-113. "No one shall be allowed to register for a general election unless he shall have paid all poll taxes due by him at least six months before the date of the election." (Acts 1908, pp. 58; Const., Art. II, Sec. 1, Par. II, and Sec. 2-603.)
>
> 34-114. "No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied at the time that the poll taxes due by said voter are paid and that he is otherwise qualified." (Acts 1894, pp. 115, 117; Const., Art. II, Sec. 1, Par. II and Sec. 2-603.)
>
> 92-108. "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property taxation, a poll tax of $1.00, * * *: Provided, that this tax shall not be demanded of * * * or female inhabitants of the State who do not register for voting." (Acts 1927, pp. 57.)

By reference to paragraph fourteen of appellant's original mandamus petition, as amended, it will be seen that the

validity of the foregoing Georgia laws was drawn in question as being repugnant to Article XIV, Section 1 of the Federal Constitution which says that "No State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person the equal protection of the laws."

Also, in paragraph sixteen of said mandamus petition, as amended, the validity of said laws are drawn in question as being repugnant to the Nineteenth Amendment to the Federal Constitution which says: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

In paragraph thirty-six of appellant's mandamus petition, as amended, the validity of said Georgia laws is drawn in question as being repugnant to Article IV, Section 4 of the Constitution of the United States, which provides that "The United States shall guarantee to every State in this Union a republican form of government."

Appellant cites the following decisions of the Supreme Court of the United States as indicating that that tribunal has jurisdiction to review the judgment of the Supreme Court of the State of Georgia upon the validity of the State constitutional provision and said laws enacted in pursuance thereof, which validity was drawn in question in the original mandamus suit and passed upon by the highest court of our State: *Colgate* v. *Harvey*, 296 U. S. 404; *Miller* v. *Schoene*, 276 U. S. 272, 48 S. Ct. 410; *Western Turf Ass'n* v. *Greenberg*, 204 U. S. 359; *American Express Co.* v. *Michigan*, 177 U. S. 440; *Hartman* v. *Greenhow*, 102 U. S. 672.

The constitutional questions raised are serious and not frivolous. *Zucht* v. *King*, 260 U. S. 174, 176; *Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 49.

The Supreme Court has never considered the constitutionality of a State poll tax. Prior decisions upholding various qualifications imposed by States on their voters have sustained statutes which were less objectionable in character, in that they did not seek to limit the franchise by discriminating against impecunious members of the community. The privilege of a citizen of the United States to vote for Federal officials is one which the United States Constitution prohibits any State from abridging by means of imposing a heavy economic burden. The right to vote for such officials is, under Twentieth Century conditions, one which inheres in the appellant by reason of his United States citizenship.

The Supreme Court has recently expanded the application of the privileges and immunities clause of the Fourteenth Amendment. *Colgate* v. *Harvey*, 296 U. S. 404.

It therefore becomes appropriate for the Court to reconsider earlier decisions holding that the right of suffrage is solely a matter of State concern. Political inequality based upon economic inequality is contrary to the basic postulates of the American democratic system.

The Georgia laws which we contend to be repugnant to the several provisions of the Constitution of the United States set out herein, and as shown in the original mandamus petition, have arbitrarily restricted the vote in Georgia to eight per cent of the population, while thirty-nine per cent of the population votes on an average in States which do not require the payment of a poll tax as a prerequisite to the right to register and vote for the electors of the President and Vice President of the United States and the Members of the Congress. These and other arbitrary, unreasonable and capricious restrictions and discriminations, as more fully set out in our statement of points to be relied on, raise very serious, substantial and undetermined Federal

questions which materially affect appellant and millions of others similarly situated politically, economically, educationally and otherwise in the enjoyment of their inherent right of freedom and the pursuit of happiness as American citizens.

Respectfully submitted,

J. Ira Harrelson,
Arthur Garfield Hays,
Counsel for Appellant.

APPENDIX "A".

SUPREME COURT OF GEORGIA.

No. 11456.

BREEDLOVE

v.

SUTTLES, Tax-Collector.

(Decided October 14, 1936.)

By the COURT:

The court properly sustained the motion to dismiss the petition in this case.

Nolen R. Breedlove, alleging himself to be twenty-eight years of age and to have resided in Fulton County continuously for more than seven years, filed his petition for mandamus against T. E. Suttles, tax collector of Fulton County, to require said officer to allow petitioner to register for elections without the payment of poll taxes and without exacting of him the oath prescribed by statute, containing the provision "that I have paid all poll taxes which I have had an opportunity of paying agreeably to law." The petitioner contends that Article 2, section 1, paragraph 3, of the Constitution of Georgia, as amended (Code, § 2-603), and all statutes enacted in pursuance thereof, to wit, Code, §§ 34-103, 34-113, 34-114, 92-108, requiring the payment of the poll tax as a prerequisite to the right to register and vote for candidates seeking the offices of President and Members of Congress, are contrary to and in derogation of the preamble and the following provisions of the Constitution of the United States, Article 4, section 4, guaranteeing to every State a republican form of government; Article 1, section 8, paragraph 1, as to uniform tax; article 1, section 9, paragraph 4, which prohibits the laying of capitation or other direct tax in proportion to the census or enumeration; article 4, section 2, paragraph 1, declaring that the citizens of each State shall be entitled to all privileges and immunities of the citizens in the several States; article 6, section 2,

declaring the Federal Constitution to be the supreme law of the land; article 14, section 1, prohibiting States making or enforcing laws abridging the privileges and immunities of citizens of the United States; article 15, section 1, guaranteeing the right of citizens without regard to race, color, or previous condition of servitude; article 19, section 1, prohibiting any laws denying or abridging the right of citizens to vote on account of sex; the first amendment, relating to the rights of conscience and the right to petition the government for a redress of grievances; the fourteenth amendment, as to the due process of law; the fifteenth amendment, that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

And the foregoing statutes in regard to registration and the payment of poll taxes are attacked as contrary to and in violation of the uniform-tax requirement prescribed by our State constitution, that all taxes shall be ad valorem; and it is alleged that these statutes are contrary to the first amendment to the Constitution of the United States as to "rights of conscience, freedom of the press," etc., and contrary to that section of our State constitution which recognizes the Constitution of the United States as the supreme law of the land; that article 2, section 1, paragraph 3, of the constitution of Georgia, as amended, is in conflict with other provisions of our State constitution, to wit, article 12, section 1, and article 7, section 2, paragraph 1; that said paragraph of the State constitution, and the laws enacted thereunder, are in violation of the due-process clause of the fourteenth amendment to the U. S. constitution and the clause in said amendment which defines the word "liberty". An oral motion to dismiss the petition was sustained, and the plaintiff excepted.

BECK, Presiding Justice:

The questions involved in this case by the objections raised as to the constitutionality of certain provisions of our law have been discussed by able text-writers and in many judicial opinions rendered by the courts of this coun-

try. In one part of his work on Constitutional Limitations, 1358-1370, the eminent writer, Justice Cooley, says:

> "We have said, that, though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulation of elections, including the prescribing of qualifications for suffrage, is left by the national constitution to the several States, except as it is provided by that instrument that the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment, it will be seen, does not forbid denying the franchise to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent. Minors, who equally with adult persons are citizens, are still excluded [as were also women before the adoption of the nineteenth amendment]; and sometimes persons who have been convicted of infamous crimes [are excluded] * * *. In some States laws will be found in existence which, either generally or in particular cases, deny the right to vote to those persons who lack a specified property qualification, or who do not pay taxes. In some States idiots and lunatics are also expressly excluded; and it has been supposed that these unfortunate classes, by the common political law of England and of this country, were excluded with

women, minors, and aliens from exercising the right of suffrage, even though not prohibited therefrom by any express constitutional or statutory provision. Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment of the constitution. One of the most common requirements is, that the party offering to vote shall reside within the district which is to be affected by the exercise of the right. If a State officer is to be chosen, the voter should be a resident of the State; and if a county, city or township officer, he should reside within such county, city, or township. This is the general rule; and for the more convenient determination of the right to vote, and to prevent fraud, it is now generally required that the elector shall only exercise within the municipality where he has his residence his right to participate in either local or general elections. Requiring him to vote among his neighbors, by whom he will likely be known, the opportunities for illegal or fraudulent voting will be less than if the voting were allowed to take place at a distance and among strangers. And wherever this is the requirement of the constitution, any statute permitting voters to deposit their ballots elsewhere must necessarily be void. * * *

"While it is true that the legislature cannot add to the constitutional qualifications of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them and of ascertaining the result, are prescribed, and heavy penalties are imposed upon those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or to falsify the result. The propriety, and indeed the necessity, of such regulations are undisputed. In some of the States it has also been regarded as important that lists of voters should be prepared before the day of election, in which should be

registered the name of every person qualified to vote. Under such a regulation, the officers whose duty it is to administer the election laws are enabled to proceed with more deliberation in the discharge of their duties, and to avoid the haste and confusion that must attend the determination on election day of the various and sometimes difficult questions concerning the right of individuals to exercise this important franchise. Electors, also, by means of this registry, are notified in advance what persons claim the right to vote, and are enabled to make the necessary examination to determine whether the claim is well founded, and to exercise the right of challenge if satisfied any person registered is unqualified. When the constitution has established no such rule, and is entirely silent on the subject, it has sometimes been claimed that the statute requiring voters to be registered before the day of election, and excluding from the right all whose names do not appear upon the list, was unconstitutional and void, as adding another test to the qualifications of electors which the constitution has prescribed, and as having the effect, where electors are not registered, to exclude from voting persons who have an absolute right to that franchise by the fundamental law. This position, however, has not been generally accepted as sound by the courts. The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting upon the same principles are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls, and there deposit their ballots, and not elsewhere, was a violation of the Constitution, because prescribing an additional qualification, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem

to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. And where the law requires such a registry, and forbids the reception of votes from any persons not registered, an election in a township where no such registry has ever been made will be void, and cannot be sustained by making proof that none in fact but duly qualified electors have voted. It is no answer that such a rule may enable the registry officers, by neglecting their duty, to disfranchise the electors altogether; the remedy of the electors is by proceedings to compel the performance of the duty; and the statute, being imperative and mandatory, cannot be disregarded. The danger, however, of any such misconduct on the part of officers is comparatively small, when the duty is entrusted to those who are chosen in the locality where the registry is to be made, and who are consequently immediately responsible to those who are interested in being registered.

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void."

And the same text-writer, in his work on Taxation (4th ed.) vol. 4, pp. 3497-3507, says:

"A capitation or poll tax is a tax on the poll without reference to property, business or other circumstances. It is imposed numerically upon citizens without reference to their capacity to sustain the burden. A poll or capitation tax is not a tax upon property but is a tax against the person. However, a poll tax, although not a tax on property, is nevertheless a tax within constitutional and statutory provisions in relation to taxes. * * * Capitation or poll taxes are generally re-

garded as a proper means for raising revenue for public purposes. The legislature of a State ordinarily has power to impose a poll tax, in the absence of direct constitutional prohibition or limitation, and constitutional objections have for the most part been overruled and the imposition of the tax held constitutional. In some States the constitution itself expressly authorizes or levies a poll tax; but constitutional provisions relating to capitation taxes are generally not self-executing. * * * It is generally held that the requirement in a State constitution that taxes shall be equal and uniform does not apply to poll taxes. * * * A poll tax on males does not violate the constitutional provision because of discrimination on account of sex. * * * It is within the power of the legislature to make the payment of poll taxes a condition precedent to the right to vote."

We have made the above lengthy quotations from Mr. Cooley's works on "Constitutional Limitations" and "Taxation" because in a brief way the principles laid down by the text-writer and the cases cited in the lengthy annotations thereto cover the substantial questions in this record. In addition, see also the following authorities: Frieszleben *v.* Shallcross, 9 Houst. (Del.) 1 (19 Atl. 576, 8 L. R. A. 337); Short *v.* Maryland, 80 Md. 392 (31 Atl. 322, 29 L. R. A. 404); Hawkins *v.* Hawkins, 350 Ill. 227 (183 N. E. 9); United States *v. Reese,* 92 U. S. 214 (23 L. Ed. 563); Thurston County *v.* Tenino Stone Quarries, 44 Wash. 351 (87 Pac. 634, 12 Ann. Cas. 314); Peacock *v.* Pratt, 121 Fed. 772, 775; LaBelle Iron Works *v.* U. S., 256 U. S. 377 (41 Sup. Ct. 528, 65 L. Ed. 998); Pohl *v.* Chicago, &c., R. Co., 52 Mont. 572 (160 Pac. 515); Olander *v.* Hollowell, 193 Iowa 979 (188 N. W. 667); State *ex rel.* Atty.-Gen. *v.* Dillon, 32 Fal. 545 (14 So. 383, 22 L. R. A. 124, 20 C. J. 76, § 37); McMahon *v.* Savannah, 66 Ga. 217 (42 Am. R. 65). It follows from what is said above that the court did not err in sustaining the motion to dismiss the petition in this case.

Judgment affirmed. All the Justices concur, except Atkinson, J., absent because of illness.

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IN THE

Supreme Court of the United States

NOLEN R. BREEDLOVE,
Appellant,

vs.

T. EARL SUTTLES, as TAX COLLECTOR,
Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL

J. IRA HARRELSON,
1517-22 Marietta St. Bldg.,
Atlanta, Georgia
ARTHUR GARFIELD HAYS,
120 Broadway,
New York City
Counsel for Appellant.

Curtiss Printing Company, Inc., Atlanta, Ga.